

### REMARKS

Claims 1-27 and 51-76 are pending. Claims 1, 5, 6, 9, 10, 12, 13, 17, 18, 21-25, and 27 are rewritten. These claims have been amended to more clearly define the invention. Claims 28-50 have been cancelled without prejudice or disclaimer. Claims 51-77 have been added. Support for these new claims can be found throughout the specification.

It is not believed that any fees are necessary at this time. However, in the event fees are required, Applicant authorizes the Commissioner to take any necessary fees, including those under 37 CFR 1.16 and 1.17, from deposit account 50-0913.

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#### **I. Rejection Under 35 U.S.C. §103(a)**

Claims 1-50 have been rejected under 35 U.S.C. §103(a) over U.S. Patent number 5,911,418 to Adams (hereinafter, "Adams") in view of one or more of U.S. Patent number 5,913,726 to Jones et al. (hereinafter, "Jones"), U.S. Patent 5,911,626 to McCrea, Jr. (hereinafter, "McCrea"), U.S. Patent 5,280,909 to Tracy (hereinafter, "Tracy"), and Casino Gaming Management (collectively, "the References"). Applicant respectfully submits that no reference or combination of references enables Applicant's invention, and therefore cannot render it obvious. Therefore, claims 1-27 and 51-77 are allowable. Claims 28-50 have been cancelled. Before discussing the References, it may be helpful to briefly review Applicant's invention.

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### A Brief Review of Applicant's Invention

In at least one embodiment, Applicant's invention is directed to a primary game of chance, such as a table game (e.g. blackjack, poker, and the like) or mechanical devices (such as slot machines), having a random or substantially random outcome. *See* pp. 18-19 and 26-28. Certain outcomes will result in the player being qualified for play on a bonus game having various randomly awarded prizes. One prize in the bonus game may be an incrementing jackpot.

Applicant's invention combines multiple elements to create a unique game that may create significant player interest and excitement. For example, bonus games are often included in games of chance in order to create player excitement and interest. Once the player has qualified for a bonus round, they know they may receive an additional, perhaps significant, prize. However, they do not know exactly what the outcome of the bonus game will be. Therefore, players will be both excited about the prize they may receive and eagerly anticipate the outcome of the bonus game.

Progressive jackpots are often used to create player excitement and encourage game play. Progressive jackpots typically take a certain percentage of qualifying wagers and add them to an incrementing jackpot. The jackpot grows the more players play the associated gaming devices. The larger the jackpot, the more anticipation players feel, the more excited they become, and the more likely they are to play gaming devices that may qualify them to win the progressive jackpot.

Game designers typically try to create games that will attract and retain players in order to maximize profits for gaming proprietors. Despite the individual advantages of bonus games

and incrementing jackpots, until Applicant's present invention, no one had found a way to successfully combine a primary game with a bonus game having an incrementing jackpot.

At least three factors must be taken into account and appropriately dealt with in order to obtain a game that may be used as a commercial product. Such a task is non-trivial because of regulatory considerations, player expectations of the payback percentage (the amount of wagers that is returned to players in the form of prizes or payouts) of table games or mechanical games, and the hold percentage of the casino (that is, the amount of each wager that the gaming operator may keep as profit).

In order to create a game that meets regulatory, player, and operator expectations, at least three problems must be solved. First, the probability of the bonus qualifying event occurring in the primary game must be determined, along with odds of winning all other prizes in the primary game. Second, the probability of the bonus event selecting the progressive prize must be determined, along with the odds of winning all other prizes in the bonus round. Finally, the amount of the jackpot at the time the jackpot is awarded must be determined. Once the target amount of the jackpot is set, the starting amount, the maximum amount, the increment rate, and the contribution rate (if a progressive jackpot, the amount of each wager set aside to increase the jackpot) of the jackpot must be set. Only when all of these variables have been optimized to obtain the desired hold and payback percentages, in addition to complying with regulatory requirements, can a commercial product be obtained. Until Applicant, no one had successfully solved this problem. Furthermore, given the interrelation of the three problems to be solved, the solution is not simply a matter of taking known bonus games and plugging in an incrementing jackpot as one of the prizes and achieving a workable solution. The present claims contain

limitations that clearly recite the interrelation of the variables required to enable a useable game.

Applicant respectfully asserts that none of the References, alone or in combination, teaches or suggests these limitations.

5 Rejection over Adams and Jones

Applicant and the Office have discussed Adams previously. The Office is relying on the following statement of Adams as rendering Applicant's invention obvious:

10                   While the illustrated wheel indicates dollar amounts of attainable prizes, other items of value may also be utilities such as a car, a cruise, or a payout from a progressive jackpot.

Column 3, lines 63-66. Applicant has previously asserted that Adams does not enable Applicant's invention because Adams contains no other statement, teaching, or even suggestion regarding progressive prizes. Certainly Adams says nothing about the complex problem, as  
15                   outlined above, of creating a successful game combining a primary game with a bonus game that randomly awards a progressive jackpot.

In response to this argument, the Office asserted that Adams did enable the creation of a successful game:

20                   while Adams may not clearly explain how to fund the progressive jackpot, he clearly specifies how to implement one in a bonus game...Consequently, one of ordinary skill in the art would clearly be able to place the words progressive jackpot on the wheel, spin the wheel and when the wheel lands on the progressive jackpot wedge, award a progressive jackpot to the player.

25                   Applicant respectfully disagrees with the Examiner's assertion of what Adams enables.

Applicant does not believe that merely placing a wedge titled “progressive jackpot” enables one of skill in the art to successfully design a workable gaming apparatus. In order to have a workable gaming apparatus, the incrementing jackpot must be funded and the Office has agreed that Adams does not disclose how to fund the progressive jackpot. One cannot award a progressive or incrementing jackpot without determining the parameters for that jackpot. As will be discussed, neither Adams nor any of the other References supplies this teaching.

In response to Applicant’s prior assertion that Adams did not enable a jackpot awarded by a bonus game, the Office asserted that Jones supplies the missing teaching. Jones appears to suggest a method of linking a progressive jackpot to one or more table games. *See* col. 1, lns. 48-50. It appears that, at the beginning of a game round, a player may place a side wager on a progressive jackpot. *See* col. 3, lns. 24-29. Based on the result of the table game, **a primary game**, the player may be awarded all or a percentage of the progressive total if the player’s hand matches **a set, predetermined, non-random set of outcomes**. *See* col. 3, ln. 66-col 4, ln. 3.

Jones only deals with the standard, known practice of awarding a progressive jackpot as a prize based on the result of a primary game. The fact that a player must place an additional side wager is of little or no consequence regarding Jones’ and Adams’ lack of enablement.

The combination of Jones and Adams fails to teach or suggest *funding* an incrementing jackpot that is randomly awarded in a bonus game. Applicant’s claims clearly specify that the game odds are determined by determining the odds of the primary game, bonus game having a random outcome, and jackpot parameters. Jones does not in any way address how to implement a progressive jackpot as a randomly awarded prize in a bonus game associated with a primary game. Jones does not in any way elucidate the complexity of making such an arrangement

possible or desirable. Jones cannot be used to enable a jackpot Jones does not award. Therefore, the combination of Jones and Adams does not enable Applicant's invention, much less render it obvious.

The Office previously cited Tracy as allegedly providing a disclosure of certain jackpot  
5 related features. Tracy, similar to Jones, appears to deal with a standard progressive jackpot awarded as a prize on a primary game. In particular, Tracy appears to relate to displaying a predetermined jackpot value to players from the beginning of a game round, in order to encourage players to play for the jackpot (because they know the value of the prize they are player for). *See* col. 3, lns. 25-39. Tracy even appears to teach away from Applicants'  
10 invention, and precise selection of game parameters, by suggesting that game parameters may be "randomly" selected. *See id.* Applicant has argued that because Tracy does not teach how to implement a progressive jackpot as a randomly awarded prize in a bonus game associated with a primary game, Tracy may not be used to render Applicant's invention obvious.

The Office responded to Applicant's previous arguments regarding Tracy by alleging that  
15 the differences between Tracy and Applicant's invention were not recited in the claims. Without conceding the validity of this response, Applicant believes the rewritten and new claims clearly express this distinction.

Applicant believes the Office cited Casino Gaming Management as allegedly enabling a person of ordinary skill in the art to determine appropriate odds for a game having a primary  
20 game having a bonus qualifying event qualifying a player for a bonus game having a randomly awarded incrementing jackpot as a bonus prize. Applicant respectfully asserts that Casino Gaming Management does not enable such a game. On the contrary, Casino Gaming

Management illustrates the complexity of developing such a game without providing guidance to implement it.

Applicant has reviewed the sections of Casino Gaming Management provided by the Office. It appears that the sections provided to Applicant, written by a gaming professor at the University of Nevada, Las Vegas, contain a general discussion of gaming statistics, volatility indexes, and sample payout schedules. Applicant does not see any discussion of odds for calculating an incrementing or progressive jackpot. However, Casino Gaming Management presents complex statistics for even relatively straight forward games such as roulette. Certainly it can be expected that an incrementing and/or progressive jackpot would be substantially more complex to implement. Making the jackpot a randomly awarded prize in a bonus game associated with the primary game adds yet another level of complexity.

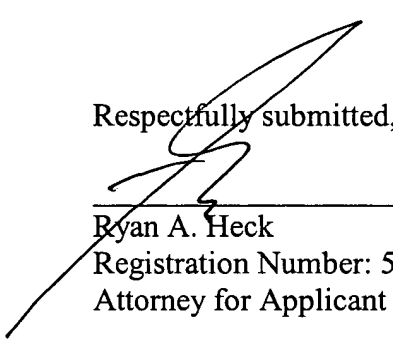
Applicant respectfully asserts that, if anything, Casino Gaming Management establishes just how complex game development can be and that the Applicant's invention is unobvious. Because neither Adams, Jones, Tracy, or Casino Gaming Management alone or in combination discloses or suggests how one of skill in the art could implement a game as claimed by Applicant, it is believed that no combination of References can render Applicant's claims obvious. Accordingly, Applicants request the withdrawal of the §103(a) rejection of claims 1-27 and are of the opinion that claims 1-27 and new claims 51-77 now are in condition for allowance.

### CONCLUSION

For all of the above reasons, the Applicant submits that the present application is in condition for allowance. If the Examiner has any questions regarding the application or this Amendment C, the Examiner is encouraged to call the Applicant's attorney, Ryan A. Heck, at (775) 826-6160.

10 February 19, 2004

Respectfully submitted,



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